

## **REMARKS**

### **STATUS**

Claims 1-11 and 24-34 remain pending in the application. Claims 12-23 have been canceled without prejudice. Claim 4 has been amended. Claim 4 is rejected under 35 U.S.C. §112. The invention set forth by claims 1-7 and 9-34 are alleged not to meet the requirements of 35 U.S.C. §102(a) as being anticipated by U.S. Patent. No. 5,772,585 to Ralston et al. (hereinafter "Ralston") and claim 8 is alleged not to meet the requirements of 35 U.S.C. §103(a) as being unpatentable over Ralston. The applicants respectfully traverse the allegations and respond as follows.

### **CLAIM REJECTIONS – 35 U.S.C. §112**

Claim 4 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. In response to the rejection of claim 4, applicants have amended claim 4, to more clearly describe the invention recited in the claim without adding any new matter.

### **CLAIMS 1-11 AND 24-34 MEET THE REQUIREMENTS OF SECTIONS 102(a) AND 103(a)**

The first issue of patentability raised by the Office action, and which the applicants must overcome, is whether each and every limitation of claims 1-7, 9-11 and 24-34 is found in Ralston. The second issue of patentability raised by the Office action concerns Ralston and 35 U.S.C. §103(a). The applicants submit that claims 1-11 and 24-34 meet the requirements of both 35 U.S.C. §102(a) and 35 U.S.C. §103(a), and therefore, claims 1-11 and 24-34 are allowable. Applicants address the rejections separately as to each independent claim and the claims that depend therefrom.

#### **§ 102 Rejection based on Ralston**

##### **Claims 1-11**

Independent claim 1 is directed to a method of self-scheduling appointments between service recipients and service providers that includes identifying a pre-authorized scheduling

ticket for the service recipient, the pre-authorized scheduling ticket including appointment scheduling information.

Ralston generally discloses a system that presents a single front end to a user to assist the user in scheduling within multiple systems located at multiple locations. It is respectfully submitted that Ralston does not disclose the use of a pre-authorized scheduling ticket for a service recipient, where the pre-authorized scheduling ticket includes appointment scheduling information. Nowhere in Ralston does it disclose a pre-authorized scheduling ticket nor any other apparatus that is created by the system, or an entity associated with the system, in advance of a user's attempt to schedule an appointment. As a result of not using a scheduling ticket, the Ralston system allows patients to schedule procedures in situations where the procedures haven't been ordered by a physician, which wastes time and resources that directly lead to decreased profitability for an organization. Furthermore, by not using a scheduling ticket, the Ralston system lacks the necessary safety aspects which would prevent a patient from scheduling a procedure that was unsafe for the patient's health.

While Ralston discloses appointment specific constraints, such as sequencing (*Ralston* Col. 5; ll 1-5) and ensuring that a patient doesn't have braces for an MRI (*Ralston* Col. 5; ll 11-16), Ralston does not disclose a system that makes a determination as to whether the patient has been ordered to have the MRI. The Ralston system thus allows anyone to contact the system to schedule any type of procedure without appropriate controls over what a user can schedule. Therefore, Ralston does not disclose pre-determining what is sensible for a patient to schedule and does not disclose the idea of identifying a pre-authorized and defined scheduling ticket. Furthermore, it should be noted that a pre-authorized scheduling ticket is distinct from a rule, as the scheduling ticket operates independent of rules, in the sense that it can act in concert with or in contradiction to the rules base of a system.

Because no embodiment of Ralston appears to disclose the invention recited in claim 1, it is submitted that claim 1 is not anticipated by Ralston. In order for a claim to be anticipated under §102, the anticipating reference must disclose at least one embodiment that incorporates all of the claimed elements. *See for example, C.R. Bard, Inc. v. M3 Systems*, 48 U.S.P.Q.2d 1225, 1230 (Fed. Cir. 1998) ("When the defense of lack of novelty is based on a printed publication that is asserted to describe the same invention, a finding of anticipation requires that the publication describe all of the elements of the claims, arranged as in the patented device..."); *In re Bond*, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990) ("For a prior art

reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference...These elements must be arranged as in the claim under review...”).

Therefore, the invention recited in independent claim 1 is not anticipated by Ralston. It is respectfully submitted that claim 1 and claims 2-11 which depend therefrom are allowable over Ralston.

#### **Claims 24-34**

Independent claim 24 is directed to a system for self-scheduling appointments by patients that includes a self-scheduling server coupled to a patient health record server and an enterprise information server. The self-scheduling server has a processor that is operable upon appointment scheduling requests to authorize appointment scheduling requests, to send appointment schedule information to the enterprise healthcare information management system for inclusion in the enterprise information database, and to send appointment schedule information to the patient health record server for inclusion in a patient health record database, and to send an appointment acknowledgment to the patient via an electronic network.

While the system disclosed in Ralston provides scheduling servers 80, Ralston does not disclose a patient health record database, let alone one that is linked to the scheduling servers 80. The Ralston system thus requires users wanting to schedule an appointment to provide all of their client information when prompted by the system. *Ralston* Col. 4, ll 46-49. The users are prompted for entry of this information after the user has initiated the appointment request. *Id.* The client information includes personal data about the client, “such as the client’s name, date of birth, social security number, address, ... service data ... payment data...” *Id.* at ll 50-57. In contrast, the system recited in claim 24 already has access to some client information which is stored on the patient health record database. This is a substantial difference from requiring a user to input, or re-input, his or her client information every time they want to schedule an appointment.

It is also submitted that Ralston does not disclose in any way a processor that is operable to send appointment schedule information to a patient health record server for inclusion in a patient health record database. Nor is such a concept inherent from the system disclosed in Ralston. While Ralston discloses sending communications directly to the user,

Ralston does not disclose sending appointment schedule information to a patient health record server for inclusion in a patient health record database. Ralston simply cannot disclose sending any type of appointment acknowledgment message to a database containing patient related data because Ralston makes no disclosure of such a database.

Applicants respectfully submit that transmitting a message directly to a user is substantially different from sending appointment schedule information to a patient health record server for inclusion in a patient health record database. Furthermore, the system recited in claim 24 is adapted to send appointment schedule information to a patient health record server for inclusion in a patient health record database in addition to sending an appointment acknowledgement to the patient via an electronic network, which is what Ralston discloses. Thus, the invention recited in claim 24 is not anticipated by Ralston.

Furthermore, the Examiner argues on page 8 and 9 of the Office action where certain limitations from claim 24 are allegedly found in Ralston, the Examiner did not point in particular where Ralston discloses a patient health record database, nor did she point out in particular where Ralston discloses sending appointment schedule information to a patient health record server for inclusion in a patient health record database. If the Examiner disagrees with Applicants' statements of what Ralston does not disclose, she is respectfully invited to point out where such disclosure exists.

A claim is anticipated by a reference only if "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP § 2131.

In view of the foregoing, it is respectfully submitted that a proper *prima facie* case of anticipation has not been made in connection with claim 24 for at least the reasons noted above. Accordingly, it is submitted that claim 24, and claims 25-34 which depend therefrom, are in condition for allowance.

### **Conclusion**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If there is any matter that the

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Examiner would like to discuss, the Examiner is invited to contact the undersigned representative at the telephone number set forth below.

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Respectfully submitted,

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